

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

MICHELLE D.,

Claimant,

v.

EASTERN LOS ANGELES REGIONAL
CENTER,

Service Agency.

OAH Case No. 2010120578

DECISION

Administrative Law Judge Jankhana Desai, Office of Administrative Hearings, State of California, heard this matter on July 19, 2011, and August 11, 2011, in Whittier, California.

Michelle D.¹ (Claimant) was present on July 19, 2011; she was not present on August 11, 2011. Victoria Baca represented Claimant on both dates. Judy Castañeda, Fair Hearing Coordinator, represented the Eastern Los Angeles Regional Center (Service Agency).

This matter was consolidated with the case of *In the Matter of Michelle D. v. Eastern Los Angeles Regional Center*, OAH No. 2011040354, and these two cases were heard together by agreement of both parties.

Oral and documentary evidence was received and argument heard. The record was closed and the matter submitted on August 11, 2011.

¹ The surnames of Claimant and her family have been omitted to protect their privacy.

ISSUE

Should the Service Agency be required to continue funding Claimant's YMCA monthly membership dues?

FACTUAL FINDINGS

1. Claimant is a 26-year-old conserved female who receives services from the Service Agency pursuant to the Lanterman Developmental Disabilities Services Act (Lanterman Act), Welfare and Institutions Code section 4500 et seq.² Claimant is eligible for regional center services due to a diagnosis of mild mental retardation. She also has a diagnosis of profound hearing loss.

2. Geraldine D. (Mother) is Claimant's mother and conservator.

3. Claimant is ambulatory and non-verbal. She communicates via reading lips, writing, gestures, pointing, and American Sign Language (ASL). Claimant requires assistance with many aspects of daily living. Claimant displays challenging behaviors such as agitation and physical aggression, and has had several aggressive episodes towards Mother.

4. Since July 9, 2010, Claimant has been living at CRJ Home (CRJ), a residential placement funded by the Service Agency. CRJ is a level-four home that provides 24 hours per day care and supervision, seven days per week.³ The Service Agency also funds an ASL instructor to teach the CRJ staff ASL.

5. Prior to CRJ, Claimant lived at Pure Joy II, a residential facility that was also funded by the Service Agency, from approximately February to July 2010.

6. The Service Agency funds Claimant's attendance at the WAPADH-Delta Day Program (WAPADH), as well as transportation to and from the program. WAPADH is a community based day program that Claimant attends Monday through Friday, from 9:00 a.m. to 3:00 p.m. The program is typically staffed at a client-to-staff ratio of 3 to 1; however, the program has been specifically tailored for Claimant so that she has a one-to-one aide. The Service Agency funds the one-to-one aide, Sarah Lareau (Lareau), who uses ASL to communicate with Claimant and teaches her advanced concepts in ASL. One of the objectives of WAPADH is exercise, health, and physical well-being. Lareau currently takes

² All statutory references are to the Welfare and Institutions Code, unless otherwise noted.

³ Residential facilities are categorized by levels; the higher the level, the more the support clients require. People who require on-going assistance and have an intense level of behavioral needs are placed in a level-four home.

her to the YMCA. As part of the program, Claimant goes on walks to the park. WAPADH also teaches Claimant healthy eating. Lareau watches Claimant's food intake and also makes sure that Claimant does not consume items such as french fries or soda.

7. Claimant attends Progressive Resources once a week, for a total of five hours per month. Progressive Resources is a counseling service, funded by the Service Agency, in which Claimant aims to increase her ability to engage in reciprocal communication with peers, her ability to participate within group activities, and her awareness of appropriate self expression within the group setting.

8. Claimant also receives community integration services through the Community Integration Program (CIP) for 16 hours per week, or a total of 80 hours per month. CIP is also funded by the Service Agency.⁴

9. The Service Agency currently funds Claimant's YMCA monthly membership, and has been funding Claimant's YMCA membership for more than five years.

10. On December 6, 2010, the Service Agency issued Claimant a Notice of Proposed Action (NOPA), stating that the Service Agency was terminating the funding of Claimant's monthly membership with the YMCA, pursuant to Welfare and Institutions Code sections 4648.5, 4646, subdivision (a), and 4646.4, subdivision (a)(2), and California Code of Regulations, title 17, sections 56004 and 56013.

11. Claimant timely appealed the decision and was permitted to continue receiving funding for YMCA membership dues pending the outcome of the appeal.

12. The Service Agency seeks to terminate funding of the YMCA since it is a social recreational service.

13. Claimant's position is that she wants the Service Agency to continue funding her YMCA membership since she is overweight, and exercising at the YMCA helps her with health and weight management. Mother is a diabetic and fears that Claimant could have such an issue in the future. Claimant attends the YMCA in Whittier, California, two to three times per week. Claimant argues that the Service Agency should change YMCA's vendorization code for Claimant, so that it can be reclassified as health and fitness.

14. Although going to the YMCA may have health benefits for Claimant, it is nonetheless a social recreational service. The Service Agency reviewed whether Claimant qualifies for an exemption under the law and properly concluded that she did not. Claimant did not demonstrate that attending the YMCA is a primary or critical means for ameliorating

⁴ Funding of CIP is the issue in the consolidated case of *In the Matter of Michelle D. v. Eastern Los Angeles Regional Center*, OAH No. 2011040354.

the physical, cognitive, or psychosocial effects of her developmental disability. There was no evidence that without funding of the YMCA, Claimant home placement is in jeopardy.

15. The YMCA is not the only means for Claimant to address her weight issues. She may exercise by walking, swimming in public pools, or any other feasible exercise. Moreover, Claimant can address her weight issues through proper diet. Mother has instructed the staff at CRJ to reduce the portion size of Claimant's food servings. Mother explained that Claimant has reduced her weight by approximately 30 pounds since she has been in the residential placement.

LEGAL CONCLUSIONS

1. The purpose of the Lanterman Act is primarily to prevent or minimize the institutionalization of developmentally disabled persons and their dislocation from family and community (§§ 4501, 4509, and 4685), and to enable them to approximate the pattern of everyday living of non-disabled persons of the same age and to lead more independent and productive lives in the community. (§§ 4501 and 4750-4751.) Accordingly, persons with developmental disabilities have certain statutory rights, including the right to treatment and habilitation services and the right to services and supports based upon individual needs and preferences. (§§ 4502, 4512, 4620, and 4646-4648.) Consumers also have the right to a "fair hearing" to determine the rights and obligations of the parties in the event of a dispute. (§§ 4700-4716.)

2. The determination of which services and supports are necessary for a consumer is made through the IPP process. The IPP must be developed through a process of individual needs determination, which may include the consumer, the consumer's parents, a legal guardian or conservator, or authorized representative. The consumer and the family must have the opportunity to actively participate in the development of the plan. (§ 4646, subd. (b).) The IPP must include a statement of the consumer's goals and objectives based on the consumer's needs and preferences or, when appropriate, the needs and preferences of the consumer's family. (§ 4646, subd. (a).) The development of the IPP must include consideration of a range of service options proposed by the IPP participants, the effectiveness of each option in meeting the goals stated in the IPP, the cost-effectiveness of each option, and "generic services and supports when appropriate." (§ 4512, subd. (b); § 4646.4, subd. (a).)

3. Section 4648.5 provides:

(a) Notwithstanding any other provision of law or regulations to the contrary, effective July 1, 2009, a regional centers' [sic] authority to purchase the following services shall be suspended pending implementation of the Individual Choice Budget and certification by the Director of Developmental Services that the Individual Choice Budget has been implemented and will result

in state budget savings sufficient to offset the costs of providing the following services:

- (1) Camping services and associated travel expenses.
 - (2) Social recreation activities, except for those activities vendored as community-based day programs.
 - (3) Educational services for children three to 17, inclusive, years of age.
 - (4) Nonmedical therapies, including, but not limited to, specialized recreation, art, dance, and music.
- (b) For regional center consumers receiving services described in subdivision (a) as part of their individual program plan (IPP) or individualized family service plan (IFSP), the prohibition in subdivision (a) shall take effect on August 1, 2009.
- (c) An exemption may be granted on an individual basis in extraordinary circumstances to permit purchase of a service identified in subdivision (a) when the regional center determines that the service is a primary or critical means for ameliorating the physical, cognitive, or psychosocial effects of the consumer's developmental disability, or the service is necessary to enable the consumer to remain in his or her home and no alternative service is available to meet the consumer's needs.

4. Section 4646, subdivision (a), states in part:

(a) It is the intent of the Legislature to ensure that the individual program plan and provision of services and supports by the regional center system is centered on the individual and the family of the individual with developmental disabilities and takes into account the needs and preferences of the individual and the family, where appropriate, as well as promoting community integration, independent, productive, and normal lives, and stable and healthy environments. It is the further intent of the Legislature to ensure that the provision of services to consumers and their families be effective in meeting the goals stated in the individual program plan, reflect the preferences and choices of the consumer, and reflect the cost-effective use of public resources.

5. Section 4646.4, subdivision (a)(2), states:

(a) Effective September 1, 2008, regional centers shall ensure, at the time of development, scheduled review, or modification of a consumer's individual program plan developed pursuant to Sections 4646 and 4646.5, or of an individualized family service plan pursuant to Section 95020 of the Government Code, the establishment of an internal process. This internal process shall ensure adherence with federal and state law and regulation, and when purchasing services and supports, shall ensure all of the following:

[¶] . . . [¶]

(2) Utilization of generic services and supports when appropriate.

6. YMCA is a social recreational service that cannot be funded by the Service Agency unless there is an available exemption under 4648.5, subdivision (c). Claimant does not fall within one of the exemptions provided by 4648.5, subdivision (c). Although Claimant may benefit from continuing to attend the YMCA, Claimant did not demonstrate that attending the YMCA is a primary or critical means for ameliorating the physical, cognitive, or psychosocial effects of her developmental disability. There was no evidence that without funding of the YMCA, Claimant's home placement is in jeopardy. Claimant has not established that an exemption is appropriate.

ORDER

Claimant's appeal is denied. The Service Agency is not required to continue funding Claimant's YMCA monthly membership dues.

DATED: August 25, 2011

JANKHANA DESAI
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the final administrative decision in this matter. Each party is bound by this decision. An appeal from the decision must be made to a court of competent jurisdiction within 90 days.